

Standard Compliance Code

Current as of 28 December 2007

Preamble

Financial markets are particularly dependent on the confidence of market participants. Transactions and services related to financial instruments should be characterised by fairness to other market participants - not only under the influence of foreign models and by virtue of European and Austrian statutory provisions. Success depends not least on a solid, trustworthy relationship between customers, credit institutions and employees. The credit institutions therefore want to prevent illicit dealings with investment- or price-related information that is not yet available to the public, prevent general market abuse and conflicts of interest, uncover violations and impose any punishments necessary ranging from restrictions on the employee's trading capabilities to proceedings under labour law.

Any Austrian credit institutions performing transactions and services related to financial instruments will therefore base their business activities on the jointly developed Standard Compliance Code, in particular in the following areas:

- trading in financial instruments,
- investment advisory,
- asset management and fund management,
- securities issue and
- financial analysis as well as
- public relations and marketing.

Every credit institution expects its employees to show integrity and commitment towards customers. The credit institution must be able to rely on its employees avoiding any forms of behaviour, relationships of dependency, or conflicts of interest, both inside and outside of the credit institution, that may prejudice the interests of the customer or of the bank. It is important to avoid any behaviour that would harm the customer, exercise an unfair influence on the capital market, or be detrimental to the credit institution's repute. Given the multitude of statutory regulations, the Standard Compliance Code also serves to clarify the conduct required of employees and thereby protect them.

1. Definition

Compliance means acting in accordance with applicable law, regulatory provisions and umbrella or internal sets of rules in all business areas covered by the present SCC and its minimum standards.

Compliance protects

- customers,
- the company and
- employees

against inadvertent violations of the above-referenced provisions. This not only protects employees but also keeps any risks to the bank's reputation to a minimum and facilitates capital market viability.

It is unanimously agreed in both theory and practice that banks should have a compliance system; MiFID and thus Sec. 18 WAG 2007, Basel Committee Publication 113 "Compliance and the Compliance Function in Banks" – and for listed banks the Issuer Compliance Ordinance (ECV) – also stipulate a compliance function. Credit institutions, however, are required to take into account the type, scope and complexity of their transactions as well as type and scope of the financial services and investment activities performed.

2. Purpose of compliance

Reference literature distinguishes between five compliance objectives:

2.1. Protection

Educating employees about relevant regulations and relevant monitoring mechanisms serves to prevent the deliberate or inadvertent violation of these regulations. This protects both the company and employees from harm. This protective function also involves the recognition and resolution of conflicts of interest.

2.2. Advice and information

The compliance function does not only provide information and ensure education, but also serves as contact point for operative departments in cases of doubt. The employees' awareness of potential risks must be honed and they must know when to actuate the compliance function.

2.3. Quality assurance

To comply with the principle of providing advice in accordance with the investment and investor needs information on the customer must be obtained ("Know-your-customer principle"). The Austrian Securities Supervision Act of 2007 (WAG) requires the compliance function to make adequate arrangements to observe such provisions.

2.4. Monitoring

Compliance with all compliance-relevant obligations under law, regulatory instruments or umbrella or internal sets of rules must be monitored. Accordingly, compliance must implement relevant monitoring systems and verify their efficiency.

2.5. Marketing

An efficient compliance function avoids the violation of rules and resulting operational risks, in particular those with a bearing on the reputation. In so doing, it also serves to maintain and strengthen the trust in the credit institution.

3. Objective

Compliance is an organisational concept which aims to establish an information symmetry between customers, the credit institution and employees based on fairness, solidarity and trust, resolve conflicts of interest and ensure compliance with applicable laws and other (e.g. internal bank) regulations. On the one hand, the task of a compliance organisation¹ is to monitor the proper conduct of its employees, to identify any violation of the rules and to ensure remedy. Furthermore, it shall develop internal guidelines, procedures, and organisational provisions to ensure that credit institutions as well as their executive bodies and employees act in due compliance with the rules. On the other hand, the compliance organisation also serves to train employees and give advice in cases of doubt.

4. Management responsibility

The full management board / the management have the duty to ensure the establishment of such an independent compliance organisation, making sure that the compliance organisation is in a position to act independently and autonomously and promoting the observance of compliance-relevant instructions. The compliance officer shall report exclusively to the full management board.

¹ When using the term "compliance organisation" in the SCC, proportionality (Sec. 1, last paragraph above) must be ensured in all cases.

5. Independence

Compliance officer and compliance office are independent and not bound by instructions in the performance of their tasks. The compliance officer heads the compliance organisation and acts in the best interest and for the integrity of the credit institutions and the market.

To protect himself and his independence and to maintain the required continuity and experience, he shall be appointed in writing by the full management board for a minimum term of two years. He shall be deemed re-appointed automatically for another term unless he is instructed otherwise in writing by the full management board no later than three months prior to the end of his term. A transfer or dismissal from this function is possible only in the event of criminal conviction or a relevant disciplinary offence (in institutions without a disciplinary commission, the full management board or the management must unanimously decide on the compliance officer's dismissal). Non-renewal, transfer or dismissal shall be reported without delay to the Financial Market Authority.

6. Position within the company

The compliance officer and compliance department shall report directly to the full management board; line reporting to the chairman of the management board is recommended. A regular *meeting day can be agreed* with the full management board for the above purpose. Annual and, if necessary, interim reports must in any event be addressed to the full management board; a credit institution may also stipulate that said reports are sent not only to the full management board but also directly to the supervisory board.

Within the credit institution, the compliance officer shall have the chief responsibility for compliance-relevant communication with the Financial Market Authority.

He shall have decision-making authority in issues regarding application and interpretation of compliance-relevant provisions and, in so doing, shall be free to resort to the expertise of the legal or other specialised departments or external experts.

The compliance officer and compliance office staff shall be authorised at any time and without limitations to inspect, access and obtain information with regard to any relevant documents, books, records, personnel data and available tape recordings. No staff member may refuse delivery of documents or provision of compliance-relevant information. Any violation constitutes a serious disciplinary offence which must be documented by the compliance organisation and will be penalised accordingly by the managers of Human Resources.

Compliance activities must be distinguished from internal audit and risk management; extensive cooperation with the latter is desirable however.

7. Equipment/resources

As an internal control system required by law, an efficient, adequately equipped and independent compliance is a valuable asset and constitutes a competitive factor for credit institutions and hence for the financial centre of Austria. "Compliance" should be firmly anchored in the employees' minds and become part of the corporate culture, not least in order to protect the employees themselves.

Each credit institution is therefore responsible for setting up a compliance function. The extent and scope of any compliance organisation depend on the size of the credit institution or on number of staff in the relevant departments, the tasks, on the extent, scope, and type and on the complexity of the financial services and transactions. Each credit institution shall appoint a compliance officer who is responsible for implementation and monitoring of this SCC and of the internal compliance rules.

The compliance office and compliance organisation must be equipped with the necessary authority, the required personnel, technical, and financial means, the necessary expertise and the required experience. Remuneration of compliance organisation staff shall be independent from the financial performance of individual compliance-relevant business divisions of the credit institutions.

8. Responsibilities

8.1: Development, wording and evaluation of internal guidelines and procedures

Every credit institution must ensure compliance with and implementation of all compliance-relevant provisions and statutory requirements. The compliance officer must therefore ensure that the compliance organisation develops and formulates internal principles, guidelines and procedures using the resources of the credit institution's relevant specialised departments; the above shall then be implemented by way of a board resolution and communicated to the employees.

The compliance officer shall submit proposals to the full management board regarding an adequate internal compliance organisation that is commensurate with the size of the bank, and with the type, complexity and scope of transactions and – as a key element – to create areas of confidentiality in existing or yet to be created organisational units of the credit institution. He shall make adjustments to accommodate organisational changes by redefining areas of confidentiality as required and inspecting the design of all organisational processes of the credit institution to avoid conflicts of interest. However, the compliance officer shall also have the duty to report shortcomings in the internal principles, guidelines and processes themselves or in their implementation.

His responsibilities therefore include, in particular, the preparation, implementation and monitoring of internal compliance guidelines, insider lists (for listed banks) and employee statements.

8.2: Ongoing monitoring of all relevant provisions (incl. training / advice)

By way of random sampling, the compliance officer shall constantly review adherence to the provisions regarding disclosure of insider information and organisational measures for the prevention of abuse or disclosure of insider information. Furthermore, he shall be in charge of reviewing measures taken to prevent market manipulation and to prevent or disclose conflicts of interests, including complaint management.

He shall give advice and provide support to the management board and employees of the credit institution in compliance-relevant matters while monitoring compliance with all relevant external and internal guidelines (in particular the SCC, and if applicable, the Issuer Compliance Ordinance).

The compliance office shall be responsible for compliance training and education of employees, in particular of employees working in areas of confidentiality and the relevant compliance officers.

9. Concept of areas of confidentiality

Credit institutions are required to set up effective organisational and administrative arrangements on a continuous basis to ensure that adequate measures can be taken to prevent conflicts of interest that prejudice the customers' interests. Adequate strategies for handling conflicts of interest are to be set up and implemented in accordance with the size and organisation of the respective credit institution as well as the type, scope and complexity of its transactions. These specifications are met by setting up areas of confidentiality, for instance. At the same time, this approach makes it possible to conduct business and provide customer service in an independent manner without being influenced by the interests and status of information of other units, without jeopardising the necessary cooperation.

Credit institutions are required to set up permanent and temporary (project-related) areas of confidentiality in a suitable manner and document these in writing; the diversity, number, and size of areas of confidentiality shall be determined as is deemed reasonable by the respective credit institution in cooperation with the compliance officer.

10. Outsourcing of business segments

The outsourcing solutions of credit institutions may impair the control options of the outsourcing institution's management and regulatory access. Credit institutions are therefore required to take into account the general diligence and risk limitation requirements of the Austrian Banking Act (Sec. 39).

When relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to customers and the performance of investment activities on a continuous and satisfactory basis, reasonable steps need to be taken in order to avoid undue additional operational risk. Even if key operational tasks are outsourced, the compliance officer must be in a position to verify whether the company is actually meeting all the requirements.